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Symphony Cleaners 44, Inc. *and* Association Tepeyac, Project Chamba. Case 2–CA–36133

May 18, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge and amended charges filed by Association Tepeyac, Project Chamba (the Charging Party) on March 8, April 29 and July 20, 2004, respectively, the General Counsel issued the original complaint on August 31, 2004, against Symphony Cleaners 44, Inc., the Respondent, alleging that it had violated Section 8(a)(1) and (3) of the Act.

Subsequently, on November 29, 2004, the Respondent and the Charging Party entered into a settlement agreement, which was approved by the Regional Director for Region 2 on that same date. The settlement agreement required the Respondent to, among other things (1) pay $9,283.45 in backpay and interest to employee Piedad Granados and pay $5,820.20 in backpay and interest to employee Maria Rojas, in two installments due on December 10, 2004 and January 10, 2005; (2) remove from its files any references to the discharges of Granados and Rojas and notify each of them in writing that this has been done and that the discharges will not be used against them in any way; and (3) post a notice to employees in English and Spanish.[1]

The settlement agreement also contained the following provision:

> **Default—**The Charged Party/Respondent agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party/Respondent, including but not limited to, failure to make timely installment payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party/Respondent, the Regional Director may issue a complaint based upon the allegations of the charge(s) in the instant case(s) which were found to have merit, to wit to reissue the complaint previously filed in the instant case(s). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations of the Act alleged therein. The Charged Party/Respondent understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the Charged Party/Respondent to show cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party/Respondent defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party/Respondent, on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement Agreement. The parties further agree that the Board's order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the [Charged Party] [Respondent].

On December 7, 2004, counsel for the General Counsel sent a package of information to the Respondent which included the notice to employees, a letter detailing the Respondent's obligations under the settlement agreement, and a certification of posting, to be signed by an official of the Respondent and returned to Region 2.

By letter dated December 13, 2004, counsel for the General Counsel advised the Respondent that it had failed to pay the backpay installments due to Granados and Rojas on December 10, 2004, and that unless the Respondent complied with the terms of the settlement agreement, she would recommend to the Regional Director that the settlement agreement be revoked on the basis of noncompliance.

By letter dated December 16, 2004, the Respondent informed the Region that it intended to honor and abide by the settlement agreement, but requested that the Regional Director adjust the backpay amounts in the agreement because, among other things, (1) Granados declined the

[1] The notice to be posted pursuant to the settlement stated that Granados and Rojas had been offered reinstatement by the Respondent, but had declined reinstatement.

Respondent's alleged offer of reinstatement in May 2004; (2) Granados allegedly was not available to search for work for a significant portion of the backpay period; and (3) the Region's initial settlement offer did not include overtime pay for Granados and Rojas.

By letter dated December 22, 2004, the Acting Regional Attorney advised the Respondent that the issues raised by the Respondent in its December 16 letter were untimely and, in any event, did not present any grounds for changing the terms of the settlement agreement. The Acting Regional Attorney's letter again requested the Respondent to comply with the settlement agreement, and advised the Respondent that the Region would initiate summary judgment proceedings in accordance with the agreement unless the Respondent complied with its terms by December 27, 2004. The Respondent did not respond to the letter and, to date the Respondent has not complied with any of the affirmative obligations set forth in the settlement agreement. Accordingly, pursuant to the terms of the default provision of the settlement agreement, on January 26, 2005, the General Counsel revoked the settlement agreement and reissued the complaint.

On January 31, 2005, the General Counsel filed a Motion for Summary Judgment with the Board. On February 3, 2005, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no timely response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the General Counsel's motion, the Respondent has failed to comply with the settlement agreement by failing to remit the agreed-upon backpay amounts due employees Granados and Rojas, failing to remove from its files all references to their discharges, and failing to post the notice to employees. Consequently, pursuant to the default provision of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with branch locations at 245 East 44th Street; 750 Sixth Avenue; 1147 First Avenue; 1030 First Avenue; 927 Second Avenue; 1441 First Avenue; 971 First Avenue; and 120 East 34th Street, New York, New York, has been engaged in the dry cleaning business.

During the 12-month period ending February 29, 2004, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $500,000 and purchased products, goods, and materials valued in excess of $5000 directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that the Union Symphony Cleaners (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent, acting on its behalf:

Robert Band	General Manager
Mr. Lee	General Manager

In or about February 2004, the Respondent's employees, including Maria Rojas, concertedly complained to the Respondent of various conduct affecting their employment, which they alleged constituted sexual harassment.

In or about March 2004, the Respondent's employees, including Piedad Granados, concertedly filed an action against the Respondent for various conduct affecting their employment, which they allege to be violations of the Fair Labor Standards Act and the State Labor Law.

The Respondent, through Robert Band and Mr. Lee, on or about March 1, 2004, interrogated employees about their activities on behalf of the Charging Party, Association Tepeyac, Project Chamba.

On about March 5, 2004, the Respondent discharged its employee Piedad Granados, and since that date the Respondent has failed and refused to reinstate, or to offer to reinstate, Granados to her former position of employment.

The Respondent discharged and refuses to reinstate Granados because she joined, supported, and engaged in activities on behalf of the Union and because she engaged in other concerted activities, including activities on behalf of the Charging Party Association and concertedly filing an action against the Respondent alleging violations of the Fair Labor Standards Act and State Labor Law, and to discourage employees from engaging in these activities.

In about late March 2004, the Respondent transferred Maria Rojas to another facility and reduced her hours of work. The Respondent took these actions because Rojas

joined and assisted the Union and engaged in concerted activities, including activities on behalf of the Association and concertedly complaining to the Respondent about conduct alleged to constitute sexual harassment, and to discourage employees from engaging in these activities.

By transferring Rojas to another facility and reducing her hours of work, the Respondent caused the termination of Rojas on about May 1, 2004. The Respondent caused the termination of Rojas because she joined and assisted the Union and engaged in concerted activities, including activities on behalf of the Charging Party Association and concertedly complained to the Respondent about conduct alleged to constitute sexual harassment, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By interrogating employees about their concerted activities on behalf of Association Tepeyac, Project Chamba, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By discharging Piedad Granados and by transferring Maria Rojas to another facility, reducing her hours of work, and causing her termination, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging employee Piedad Granados and by transferring and reducing the work hours of Maria Rojas and causing her termination, we shall order the Respondent to make Granados and Rojas whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. In this regard, the Respondent agreed in the settlement agreement that it would pay Granados $9,283.45 in backpay and interest, and that it would pay Rojas $5,820.20 in backpay and interest, to cover the period from their terminations until the effective date of the settlement agreement. As indicated above, the Respondent has not paid any backpay to Granados and Rojas, and therefore we shall order the Respondent to pay them these amounts.

We find, however, that the backpay due Granados and Rojas should not be limited to these amounts. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could issue an Order "providing a full remedy for the violations found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement Agreement." Accordingly, under this language, it is appropriate to provide the "customary" remedies of reinstatement, full backpay, expungement of the Respondent's personnel records, and notice posting.[2]

The additional backpay due Granados and Rojas shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). However, because we shall order the Respondent to pay the liquidated backpay amounts specified in the settlement agreement, the applicable backpay periods will commence on November 29, 2004, the day the parties executed and the Regional Director approved the settlement agreement. We find it necessary to impose this limitation to prevent an unintended double recovery for the periods running from the dates that Granados and Rojas were terminated to the effective date of the settlement agreement.

We shall also order the Respondent to offer Granados and Rojas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. The stipulated Notice to Employees in the settlement agreement stated that the two employees had declined the Respondent's offers of reinstatement. Nevertheless, as the settlement agreement has been revoked by the Regional Director, we find that a reinstatement remedy is appropriate here.

In addition, the Respondent shall also be required to remove from its files all references to the unlawful discharge of Piedad Granados and the unlawful transfer, reduction in hours, and termination of Maria Rojas, and to notify them in writing that this has been done and that

[2] We note that the parties' settlement agreement provided for the posting of notices to employees in both English and Spanish. In addition, the General Counsel's motion requests the Board to order the Respondent to "post the Notice to Employees required by the settlement agreement." In view of these circumstances, we have provided for a Spanish language translation of the Board's notice.

Chairman Battista notes that the settlement agreement has been set aside, and thus cannot be relied upon for the above provision. However, he does not object to providing a Spanish language translation of the Board's notice.

this unlawful conduct will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Symphony Cleaners 44, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their protected concerted activities.

(b) Discharging, transferring, or reducing the hours of employees because they engage in union or protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Piedad Granados and Maria Rojas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Remit to Region 2 $9,283.45 to be disbursed to Piedad Granados and $5,820.20 to be disbursed to Maria Rojas in accordance with the November 29, 2004 settlement agreement, and make them whole for any loss of earnings and other benefits suffered since November 29, 2004, as a result of the Respondent's discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Piedad Granados and the unlawful transfer, reduction in hours, and termination of Maria Rojas, and within 3 days thereafter, notify them in writing that this has been done and that this unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be translated into Spanish, and both Spanish and English notices shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 18, 2005

Robert J. Battista , Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their protected concerted activities.

WE WILL NOT discharge, transfer, or reduce the hours of employees because they engage in union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Piedad Granados and Maria Rojas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL remit to Region 2 $9,283.45 to be disbursed to Piedad Granados and $5,820.20 to be disbursed to Maria Rojas in accordance with the November 29, 2004 settlement agreement, and make them whole for any loss of earnings and other benefits suffered since November 29, 2004, as a result of our unlawful discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Piedad Granados and to the unlawful transfer, reduction in hours, and termination of Maria Rojas, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that our unlawful conduct will not be used against them in any way.

SYMPHONY CLEANERS 44, INC.